

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

March 11, 2015

The Board of Agriculture, Trade and Consumer Protection met on March 11, 2015, at the Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Board Room, Madison, WI. The meeting was preceded by public notice as required by s. 19.84, Stats.

Call to Order

Board Chair Andy Diercks called the meeting to order at 9:09 a.m.

Members Present

Andy Diercks, John Koepke, Nicole Hansen, Michael Dummer, Dennis Badtke, Dean Strauss, and Miranda Leis were present. Mark Schleitwiler and Doug Wolf were absent.

Minutes

Motion

John Koepke noticed a clerical error in Nicole Hansen's section of the Board Member Reports. John requested that the name "Miranda" be corrected to Nicole in that section.

Nicole Hansen made a motion, seconded by Mike Dummer, to approve the amended February 18, 2015 Board minutes. Motion approved unanimously.

Public Appearances

Richard Brye- Mr. Brye appeared before the board representing Vietnam veterans and their families to urge the consumer protection area of the department to protect the public from the Dow Chemical Company's new product Enlist. Enlist is a herbicide that combines 2,4-D and glyphosate, also known as Roundup. The herbicide when broken down produces a byproduct called dioxin, which has been tied to Agent Orange and when exposed to humans can suppress their immune system making them susceptible to over 10 types of diseases. Farmers using this product as an herbicide on their field could be exposing not only themselves but to the public receiving the crops grown in that field.

The Board thanked Mr. Brye for his service to the country. Board Member John Koepke requested a report at a future board meeting on 2,4-D and dioxin from the Pesticide Management Program in the department.

David Wright-Racette- Mr. Wright-Racette, Policy Organizer with the Wisconsin Farmers Union, came before the board to request that the board not approve the emergency scope statement for ATCP 100 relating to milk contractors and ATCP 99 relating to grain dealers and grain warehouse keepers. The Wisconsin Farmers Union requested more vetting of the Agricultural Producer Security Fund before any changes, even temporary, take place. The proposed rules would diminish the minimum balance in the fund by over 50% leaving a balance of 5 million which they feel would be inadequate for the industry.

Ron Statz- As General Manager for the Scenic Central Milk Producers Cooperative, Mr. Statz supported the emergency rule for ATCP 100 relating to Milk Contractors. While a more thorough audit of the Agricultural Producers Security Fund is necessary, he felt this temporary emergency rule would allow the agency and industry more time to complete the audit of the fund to determine the next appropriate steps.

Shawn Pfaff- Mr. Pfaff, representing the Wisconsin Cheese Makers Association and the Wisconsin Agribusiness Association, spoke in support of the DATCP board's current structure and functionality. The Wisconsin Cheese Makers Association also supports the emergency rules relating to ATCP 99 and ATCP 100. The Association feels that the Agricultural Producer Security Fund is flawed and needs to be reformed. By approving the scope statement of this emergency rule, this will save milk contractors and their patron dairy farmers between \$450,000 to \$800,000 in assessments.

ATCP 100 Milk Contractors - Emergency Rule (Scope Statement)

Jeremy McPherson, Director of the Business Trade Practices Bureau within the Division of Trade and Consumer Protection, presented the emergency rule scope statement for ATCP 100 related to milk contractors.

The emergency rule will amend fund assessment exemption requirements for milk contractors and proposes a decrease in the agricultural producer security overall fund balance minimum requirement. This change would bring the minimum balance set by rule from \$11 million to \$5 million, which is the minimum set in s. 126.88 (1) (a), Stats. The emergency rule is necessitated by the recent decrease in the agricultural producer security overall fund balance due to a large default claimed by the vegetable contractor industry. Without this change, milk contractors would not be eligible for fund assessment exemption for many years and would ultimately repay a large portion of the fund balance lost in the default to vegetable producers. The emergency rule would be effective May 1st in coordination with the start of the next licensing year for milk contractors.

Motion

Mike Dummer made a motion, seconded by Dean Strauss, to approve the scope statement of emergency rule ATCP 100. Motion approved unanimously.

ATCP 99- Grain Dealers and Grain Warehouse Keepers- Emergency Rule (Scope Statement)

Jeremy McPherson, Director of the Business Trade Practices Bureau within the Division of Trade and Consumer Protection, presented the emergency rule scope statement for ATCP 99 related to grain dealers and grain warehouse keepers.

The emergency rule will amend fund assessment exemption requirements for grain dealers and grain warehouse keepers and proposes a decrease in the agricultural producer security overall fund balance minimum requirement. This change would bring the minimum balance set by rule from \$11 million to \$5 million, which is the minimum set in s. 126.88 (1) (a), Stats. The emergency rule is necessitated by the recent decrease in the agricultural producer security overall fund balance due to a large default claimed by the vegetable contractor industry. Without this change, grain dealers would not be eligible for fund assessment exemption for many years and would ultimately repay a large portion of the fund balance lost in the default to vegetable producers. The emergency rule would be effective September 1st in coordination with the start of the next licensing year for grain dealers and grain warehouse keepers.

DATCP and the Agricultural Producer Security Council have identified the need to evaluate the entire agricultural producer security program, so that changes can be made to mitigate the impact of large defaults in the future. This entire process, including the performance of the actuarial study, will take more than a year.

Motion

Dennis Badtke made a motion, seconded by John Koepke, to approve the scope statement of emergency rule ATCP 99. Motion approved unanimously.

Dennis Badtke and John Koepke also requested more information on the number of defaults that the agency has prevented to be presented at a future board meeting. Andy Diercks requested that a permanent scope statement be presented to the board shortly after the actuarial findings are complete.

Consumer Protection Report

Sandy Chalmers, former Division Administrator, and Michelle Reinen, Director of the Bureau of Consumer Protection in the Division of Trade & Consumer Protection, provided an update on the Consumer Protection Bureau.

Ms. Chalmers reviewed several of the previous year's Top Ten Consumer Complaints. The top five complaints were telemarketing, landlord-tenant issues, telecommunications, identify theft, and propane complaints. Telemarketing complaints topped the list making up 19% of the total complaints received by the agency. Last year's harsh winter and subsequent propane shortages in the state prompted 455 complaints to the agency, putting propane on the Top Ten list for the first time. To help Wisconsin consumers weigh their options when buying propane, DATCP created a fact sheet that includes background on common delivery and pricing options and suggested questions to ask providers when comparing offers.

ATCP 21- Plant Inspection and Pest Control (Scope Statement)

Chris Deegan, Plant Pest and Disease Manager within the Division of Agricultural Resource Management, presented the scope statement related to ATCP 21 and the Mountain Pine Beetle (MPB).

This proposed rule would modify current plant pest control rules related to the import of plants and plant products that may introduce a pest known as the Mountain Pine Beetle into Wisconsin. MPB has been described as the most destructive pest of mature pines in North America. Its four major host species are ponderosa, lodgepole, sugar and white pine, but MPB has been recorded attacking at least a half-dozen other native pine species. The current unprecedented outbreak of MPB is now spread over 88 million acres of pine forests in Colorado, Wyoming, Idaho, Montana and South Dakota, as well as the Canadian provinces of Alberta and British Columbia. Estimates of pine mortality in infested forests can reach 80%.

This rule will explore the following mitigating actions:

- Establish a quarantine that will restrict the movement of regulated items into Wisconsin from or through states and provinces known to be affected by MPB.
- Provide an exemption for articles that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official.
- Provide an exemption for businesses that enter into a state compliance agreement. The compliance agreement describes in detail what a company can and cannot do with regulated articles.

Motion

Nicole Hansen made a motion, seconded by Dennis Badtke, to approve the scope statement of ATCP 21. Motion approved unanimously

National Veterinary Stockpile Exercise

Dr. Paul McGraw, Division Administrator of the Division of Animal Health, presented a powerpoint regarding the recent National Veterinary Stockpile mobilization exercise (NVS) and the truck wash demonstration.

The United States Department of Agriculture (USDA) maintains and controls a stockpile of critical veterinary resources that are available to states, tribes and territories during a damaging animal disease outbreak or disaster such as Foot and Mouth Disease (FMD) or High Path Avian Influenza (AI). The stockpile includes items such as: coveralls, boots, disinfectants, gates, chutes, vaccines and response support services that can be deployed within 24 hours of an outbreak situation.

The NVS held an introductory workshop, drill and full scale exercise in late fall and early January of 2015. The goals of the exercise were to:

- Deploy NVS countermeasures, including simulated FMD vaccine in cold weather conditions.
- Develop a Wisconsin NVS plan.
- Identify logistics support options in WI for a foreign animal disease response.
- Develop leadership within WI Incident Management Team.

Wisconsin Agricultural Statistics Services (WASS) Report

Greg Bussler, State Statistician, updated the Board on the following:

- Production Report
 - In January, 2.4 billion pounds of milk were produced in Wisconsin.
 - Milk production in 23 major states totaled 16.5 billion pounds.
 - As of February 1st, Wisconsin had 10,051 milk cow herds, down 447 herds since February 2014.
- Price Report
 - January price of \$18.40 per hundredweight of milk.
 - January price of corn sold for \$3.71 per bushel.
 - January soybean price sold for \$10.20 per bushel.
 - December price for alfalfa hay sold for \$136 per ton, down \$64 per ton since last January.
- Farms and Land in Farms
 - The total number of farms in Wisconsin in 2014 was 69,000. This is down 800 farms from 2013.
 - The total number of farms in the United States in 2014 was 2.08 million farms. This is down 18,000 farms from 2013.
 - Total land in farms in Wisconsin in 2014 was 14.5 million acres.
 - Wisconsin's average farm size in 2014 was 210 acres. This is up one acre from 2013.

- Crop Values
 - The production of Wisconsin's field and miscellaneous crops was valued at \$3.75 billion in 2014. This was a 3 percent decrease from 2013.
 - The value of corn production totaled \$1.8 billion, down 7 percent from the previous year. Wisconsin's corn price averaged \$3.70 per bushel in 2014.
 - The value of soybean production totaled \$795 million in 2013. The average price of soybeans in 2014 was \$10.10 per bushel.
- Corn and Soybean County Estimates
 - Estimates were released February 19th and are used by crop insurance to determine claim payouts.
 - Rock County led Wisconsin in corn production with 27.7 million bushels. The highest average yield was 187.4 bushels in Walworth County.
 - Rock County led Wisconsin in soybean production in 2014 with 4.8 million bushels. The highest average yield was 57.4 bushels per acre in Lafayette County.
- March Planting Intentions
 - Interviewers are currently collecting data on the March Planting Intentions. The report will be released on Tuesday, March 31.

Frac Sand Mining Report

Dan Baumann, Secretary's Director for Western WI within the Department of Natural Resources, presented a powerpoint to assist with his Frac Sand Mining Report.

Sand mining has occurred in Wisconsin for more than 100 years catapulting Wisconsin into the national leader in industrial sand production. Recent growth in the petroleum industry has created a high demand for sand that can be used for hydrofracking, a technique used to extract natural gas and crude oil from rock formations in other states. Wisconsin has high-quality sand resources and, as a result, the DNR has seen a substantial rise in permit requests to mine industrial sand. Industrial sand is sometimes called "frac" sand or silica sand. As much as 70 percent of the fine-grain sand extracted from the mines in Wisconsin is usable by gas and oil companies for a type of oil and natural gas drilling known as hydraulic fracturing, or fracking.

The extracted sand is often processed locally. Processing of the sand typically involves washing and separating the sand into grain sizes suitable for hydrofracking. The sand is then shipped out of state for use at gas and oil fields for hydrofracking. The material removed during processing may be sold as a byproduct or is returned to the mine site as part of the reclamation process. The mines in Wisconsin produced about 30 million tons of frac sand in 2014 that left the state on trucks and rail cars for gas and oil fields in North Dakota, Oklahoma, Texas and Pennsylvania.

Given the interest in hydrofracking and Wisconsin's abundant supply of raw materials, the topic of sand mining in Wisconsin has generated interest from regulators, legislators, local governments and the general public.

The DNR regulates the following:

- Industrial sand mines must follow the same requirements as other nonmetallic mining operations in Wisconsin, including getting necessary air and water permits and following state reclamation laws.
- Mining and processing operations may have onsite repair and maintenance facilities which generate small amounts of hazardous waste (hydraulic oil, waste oil, cleaning solvents and anti-freeze) and may be subject to the hazardous waste regulations.
- Industrial sand mining facilities may fall under the requirements of the Safe Drinking Water Act.

Farm Center Report

Kathy Schmitt, Bureau Director for the Wisconsin Farm Center within the Division of Agricultural Development, presented a report to the board.

The Wisconsin Farm center works with farmers to improve their wellbeing so they can grow Wisconsin agriculture. Staff work with farmers to provide objective information they can use to make informed decisions. Assistance is provided through the use of a toll-free helpline as well as individualized service at the farm table.

Core services include:

- Financial consultations and feasibility analysis
- Farm succession planning
- Mediation
- Rural Electric Power Quality
- Dairy Herd Diagnostic services
- Minority and beginning farmer services
- Specialty enterprise development
- Information and referral resources

The Farm center worked closely with Hmong ginseng growers recently at the annual Spring Growers Meeting where ginseng grower Mary Hausback, PhD from Michigan State University, was able to collaborate with the growers and will be planning small group workshops designed specifically for Hmong growers. The Midwest Organic Farming Conference was also a success that had 65 Hmong growers in participation. The event was funded by the Specialty Crop Block Grant and had two workshops presented in Hmong by Hmong growers themselves.

Livestock Siting Technical Expert Committee Report

Deputy Secretary Jeff Lyon presented a powerpoint to the board regarding an update on the Livestock Facility Siting Technical Expert Committee.

The Livestock Facility Siting Law consists of a state statute (s. 93.90) and administrative rule ATCP 51 that establish state standards and procedures local governments must use if they choose to require conditional use or other permits for siting new and expanded livestock operations. The siting statute affects local ordinances that require conditional use or other similar permits, but does not affect other ordinances such as shoreland and flood plain zoning. The statute limits the exclusion of livestock facilities from agricultural zoning districts. The Livestock Facility Siting Law includes a requirement calling for a review of the technical standards every 4 years.

DATCP Secretary Ben Brancel appointed nine members to the Livestock Facility Siting Technical Expert Committee, which started its review of ATCP Rule 51 at its first meeting on September 18, 2014. The expert panel's job, as an advisory committee, is to recommend if current livestock siting standards need to be updated to keep pace with changing agricultural practices while protecting the environment. The committee will also take into account a report from the Manure Irrigation Work Group to be finalized in April. The committee will then complete their final report and those recommendations will be presented to Secretary Brancel.

Board Resolution Related to Council Status

Motion

Dennis Badtke made a motion, which was seconded by Miranda Leis, to approve the attached resolution urging the Governor and the legislature to maintain the current statutory authority of the board and to remove the provision in the proposed budget converting the board to an advisory council. Motion approved unanimously.

Board Resolution Related to Land and Water Conservation/Nutrient Management Planning

Motion

Mike Dummer made a motion, which was seconded by John Koepke, to approve the attached resolution urging all farmers to adopt and implement nutrient management plans, according to state farm conservation standards and to encourage the Department to continue to engage farm groups, crop consultants, nutrient applicators, cooperatives, food companies, and municipalities to achieve real, timely, and broad-based compliance with Wisconsin's nutrient management and farm conservation standards. Motion approved unanimously.

Board Member Reports

Miranda Leis- Miranda has been very busy in her new role as the manager of the feed department for Organic Valley. Demand for organic grain, feed grade corn and wheat is at a high as Organic Valley continues to help producers with marketing while monitoring the west coast

dock strikes that are slowing down all importing and exporting. On the farm, spring came early and brought 5 lambs for Miranda's kids to start raising.

Nicole Hansen- Strikes on the west coast shipping ports have impacted the cranberry exports and the industry is closely watching to see what happens. The early warm weather has Nicole focused on monitoring her cranberry plant health as the ice and snow melt.

Mike Dummer- Mike is happy to see spring came a little ahead of schedule with little run off and no flooding risks. Mike was appreciative for the report on Frac Sand Mining and encourages state and federal governments to provide assistance to municipalities that are trying to govern this new industry which has been exploding within Wisconsin recently.

Dean Strauss- Dean had a busy winter with nutrient management planning and wrapping up all the necessary paperwork before spring hits. Dean is excited to move forward with the installation of a new digester system that possesses ultrafiltration and reverse osmosis capabilities into one of his dairy operations.

Andy Diercks- Andy was recently in Washington DC with the UW College of Agricultural and Life Sciences and UW Extension to meet with the congressional delegation regarding federal funding. Hundreds of farmers have been at the Capitol lobbying on the high capacity well issues and implements of husbandry. Andy was glad to hear the report on Frac Sand Mining which he found very interesting.

John Koepke- John's happy to see an early spring but cautious to see what the next few months will hold weather wise. Life has been good on the farm and his family is healthy.

Dennis Badtke- Dennis did not have anything to report on at this time.

Secretary's Report

On March 13th, the Secretary will speak at the Agronomy Convention hosted by the Badger Crops Club student organization at UW-Madison. The group is expecting 300 students from all over the country to attend, where the Students of Agronomy, Soils and Environmental Sciences (SASES) will show off Wisconsin agriculture.

In late February, the Secretary keynoted at the Agricultural Community Engagement (ACE) regional meetings in Wisconsin Dells and Green Bay. These meetings are sponsored by Professional Dairy Producers of Wisconsin (PDPW) and the Towns and Counties Associations to bring community leaders, elected officials, conservation officials, and dairy and livestock producers together for a day of dialogue.

The Secretary also traveled to La Crosse to speak at the general session of the Midwest Organic & Sustainable Education Services (MOSES) Organic Farming Conference, which took place at the end of February. The department is a sponsor of the conference.

The department is encouraging Wisconsin companies engaged in dairy genetics, feed and feed ingredients, agricultural equipment, dairy, and cheese products to showcase their products at the China World Dairy Expo and Summit on April 22nd-24th at the Harbin International Exhibition Center in Harbin, Heilongjian, China. Tens of thousands of purchasers from dairy enterprises and cow-breeding businesses, as well as academic institutions and governmental officials, attend this annual event, held in a significant center of China's dairy and beef production.

The Agricultural Producer Security Fund may be seeing some claims from producers totaling around 1.3 million dollars relating to Liberty Milk Marketing Cooperative. Liberty Milk Marketing Cooperative is a small cooperative with between 20 to 30 members. All claims will need to go through the appropriate vetting process but some money may be recouped through a receivership.

Avian Influenza (AI) is becoming a concern for the Midwest poultry industry. AI originated in birds in China and is a flu caused by viruses that infects birds and can make them ill, sometimes resulting in death. It is an infectious disease in birds caused by type A strains of the influenza virus. AI affects several types of birds, including farmed poultry, i.e. chickens, geese, turkeys and ducks. In the US, Washington, Oregon, California, Minnesota and Arkansas have all reported outbreaks within their states. Some theorize that the outbreaks might be related to a migratory pattern.

Wisconsin dairy herd numbers are holding above 10, 2800 according to the Wisconsin Agricultural Statistics Services with production last year totaling 27.8 billion pounds. This is slightly higher than the previous year. Processing facilities still remain challenged with getting enough Wisconsin Milk without having to import to meet demand.

The Secretary, along with the DATCP board, recognized Jan Shepel in her retirement as an agricultural journalist from the Wisconsin State Farmer. Jan's career spanned 31 years and she was commended on writing fair, accurate and balanced articles for the farming community. The Secretary and board thanked Jan and wished her well in retirement.

Future Schedule and Agenda Items

The Board is scheduled to meet May 13th. The Board requested a report at a future board meeting on 2,4-D and dioxin from the Pesticide Management Program in the department. The board would also like an update report from the Agricultural Producer Security Fund within the next several months after the actuarial study is completed.

Adjournment

By unanimous consent, the Board adjourned at approximately 2:31pm.

Andy Diercks, Board Chair

Nicole Hansen, Secretary